

BENTON OIL AND GAS CO. and	:	Order Dismissing Appeals
MARMAC RESOURCES CO.;	:	
JOHN B. STAATS;	:	
WILLIAM N. STAATS; and	:	
WHITEMAN INDUSTRIES,	:	Docket Nos. IBIA 92-36-A
Appellants	:	IBIA 92-65-A
	:	IBIA 92-67-A
v.	:	IBIA 92-76-A
	:	
MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	December 17, 1991

Appellants Benton Oil and Gas Co. and Marmac Resources Co. (Docket No. IBIA 92-36-A), John B. Staats (Docket No. IBIA 92-65-A), William N. Staats (Docket No. IBIA 92-67-A), and Whiteman Industries (Docket No. IBIA 92-76-A) each sought review of a notice of additional royalty assessment under an Osage oil and gas lease. These assessments were contained in October 21, 1991, letters to each appellant from the Muskogee Area Director, Bureau of Indian Affairs (Area Director). The Board of Indian Appeals (Board) received the four notices of appeal on October 31, November 7, and November 8, 1991.

The Area Director issued in excess of 500 letters assessing additional royalty under Osage oil and gas leases on October 21, 1991. The same legal issue is raised under each assessment. The Board has received a substantial number of appeals from the Area Director's assessment letters.

On November 21, 1991, the Board received a group appeal from more than 200 persons who had retained the same attorney, Douglas Wilson, Esq., to represent them in appealing notices of additional royalty assessments. This appeal has been docketed as Melvin E. Acott, et al. v. Muskogee Area Director, Docket No. IBIA 92-95-A. Although each of the present appellants was listed as one of Wilson's clients in Acott, it appears likely that Wilson was not aware that they had also filed individual appeals when he filed his group notice of appeal.

After receiving Acott and Wilson's client list, the Board compared Wilson's clients with the persons who had filed individual appeals. It identified the present four appellants as possible participants in Acott. Consequently, when the Board issued notices of docketing for these appeals, it served a copy of each notice on Wilson and stated: "Wilson and/or appellant is asked to verify whether or not Wilson is representing appellant in

the group appeal. If he is, appellant may wish to withdraw this appeal as duplicative of the group appeal." 1/

On December 16, 1991, the Board received an entry of appearance in each of the present appeals by Wilson. Wilson requested an order nunc pro tunc, which would include these appellants in a November 13, 1991, order concerning procedures as well as the November 20, 1991, order discussed in footnote 1. 2/

Appellants' motion is granted. Appellants will be covered by the procedures established in the Board's November 13, 1991, order. Their individual appeals will be dismissed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the present appeals from the Muskogee Area Director's October 21, 1991, decisions assessing additional royalties are dismissed. This order does not affect the status of these persons as appellants in Melvin E. Acott, et al. v. Muskogee Area Director, Docket No. IBIA 92-95-A.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge

1/ This suggestion was made to conform with a Nov. 20, 1991, order docketing and dismissing 13 other appeals that had been filed by individuals who later decided to join in Acott. The Nov. 20 dismissal was without prejudice to refile through the group appeal. As previously mentioned, the Board received Acott on Nov. 21, 1991. See Nadel and Gussman v. Muskogee Area Director, 21 IBIA 68 (1991).

2/ Wilson's request is opposed by the Area Director, who characterizes the request as one for an extension of time to file an appeal. It appears likely that this opposition is based upon confusion over the identity of the appellants involved in this motion. The Area Director indicates that the appeals of the present appellants were dismissed on Nov. 20, 1991. This is incorrect. None of these appellants was included in the Board's Nov. 20 order. Each of them filed a timely notice of appeal, both as an individual and through Acott.